

**BEFORE THE
FEDERAL ELECTION COMMISSION**

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Democratic National Committee
430 S. Capitol St. SE
Washington, DC 20003

Complainant,

v.

MUR # 7151

Great America PAC
107 S West St Suite 555
Alexandria, VA 22314

Dan Backer, Treasurer
Great America PAC
107 S West St Suite 555
Alexandria, VA 22314

Donald J. Trump
725 Fifth Avenue
New York, NY 10022

Donald J. Trump for President, Inc.
725 Fifth Avenue
New York, NY 10022

Timothy Jost, Treasurer
Donald J. Trump for President, Inc.
725 Fifth Avenue
New York, NY 10022

Respondents.

OFFICE OF GENERAL
COUNSEL

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COMMISSION

COMPLAINT

Complainant files this complaint with the Federal Election Commission (the "FEC" or "Commission") under 52 U.S.C. § 30109(a)(1) against Great America PAC, its treasurer, Dan Backer, in his official capacity, Mr. Donald J. Trump ("Trump"), Donald J. Trump for President, Inc. ("the Trump campaign"), and the Trump campaign's treasurer Timothy Jost, in his official capacity ("Jost") (collectively, "Respondents"). Great America PAC and Mr. Backer have

violated the Federal Election Campaign Act of 1971 ("the Act") and FEC regulations by making an illegal in-kind contribution. Trump, the Trump campaign, and Mr. Jost have violated the Act and FEC regulations by accepting an illegal in-kind contribution.

A. FACTUAL BACKGROUND

Donald J. Trump is the Republican nominee for President. Donald J. Trump for President, Inc. is his campaign committee, and Timothy Jost is the committee's treasurer. Great America PAC is a political committee ("Super PAC") that has warranted to the FEC that it will accept contributions in unlimited amounts and will not make any monetary or in-kind contributions to candidates.¹ Dan Backer is its treasurer.

Rudy Giuliani, a former mayor of New York City, is a close advisor to Mr. Trump with a "prominent role" in the Trump campaign.² Mr. Trump tapped Mr. Giuliani as a strategic advisor during the primaries, including him in his "kitchen cabinet."³ In February, it was reported that Mr. Giuliani "conferred at length with Trump at least three times in the past month, both in person and by phone, and has counseled the real estate mogul 'as a close personal friend' about campaign issues."⁴ Several months later, he was one of a handful of advisors who participated in preparing Mr. Trump for the presidential debates.⁵ Specifically, Mr. Giuliani was one of three advisors who was regularly "summoned" to Mr. Trump's "New Jersey golf course for Sunday chats. Over bacon cheeseburgers, hot dogs and glasses of Coca-Cola, they test out zingers and

¹ See Great America PAC, FEC Form 1 Statement of Organization at 5 (Feb. 15, 2016), <http://docquery.fec.gov/pdf/694/201602159008458694/201602159008458694.pdf>.

² Ken Kurson, *EXCLUSIVE: Rudy Giuliani Takes Break from Law Firm to Support Donald Trump* (Oct. 5, 2016, 3:21 PM), <http://observer.com/2016/10/exclusive-rudy-giuliani-sidelined-by-law-firm-for-supporting-donald-trump/>.

³ Robert Costa, *Donald Trump consults with Rudy Giuliani as he builds political kitchen cabinet* (Feb. 21, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/02/21/donald-trump-consults-with-rudy-giuliani-as-he-builds-political-kitchen-cabinet/>.

⁴ *Id.*

⁵ Philip Rucker, Robert Costa, and Anne Gearan, *Inside debate prep: Clinton's careful case v. Trump's 'WrestleMania,'* Washington Post (Aug. 27), https://www.washingtonpost.com/politics/inside-debate-prep-clintons-careful-case-vs-trumps-wrestlemania/2016/08/27/ce05291c-6bbb-11e6-99bf-f0cf3a6449a6_story.html.

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chew over ways to refine the Republican nominee's pitch."⁶ He also serves as a surrogate, including a speaker at the Republican convention, as part of Mr. Trump's communications strategy.⁷ Mr. Trump regularly advises Mr. Giuliani on key strategic matters. For example:

Mr. Giuliani has played a significant role behind the scenes, too, urging Mr. Trump to tone down his remarks and rethink his immigration plan. He also took control of a private campaign round-table discussion of national security recently, in which he addressed the room as often as Mr. Trump did, according to someone in attendance.⁸

For all of this, he has been called "one of Donald J. Trump's most prominent advisers and most vocal defenders."⁹

In July 2016, Great America PAC produced an advertisement, titled "Leadership," in which Mr. Giuliani appears speaking directly to the camera, and says, "America's leadership can and must be better, and with Donald Trump as President, it will be."¹⁰ Mr. Giuliani also argues in the ad that President Barack Obama and Hillary Clinton "want to stay the course" of "failed leadership."¹¹

B. LEGAL ANALYSIS

A Super PAC may not make a contribution to a federal candidate, and a federal candidate may not accept a contribution from a Super PAC.¹² That prohibition includes in-kind contributions.¹³ A "coordinated communication" is considered an in-kind contribution and is

⁶ Philip Rucker, Robert Costa, and Anne Gearan, *Inside debate prep: Clinton's careful case vs. Trump's 'WrestleMania'* (Aug. 27, 2016), https://www.washingtonpost.com/politics/inside-debate-prep-clintons-careful-case-vs-trumps-wrestlemania/2016/08/27/ce05291c-6bbb-11e6-99bf-f0cf3a6449a6_story.html.

⁷ Steven W. Thrasher, *Rudy Giuliani is Donald Trump's 'elder statesman.' How fitting*, The Guardian (Oct. 5, 2016, 7:30 AM), <https://www.theguardian.com/commentisfree/2016/oct/05/rudy-giuliani-donald-trump-surrogate-new-york>.

⁸ Jonathan Mahler and Maggie Haberman, *For Rudy Giuliani, Embrace of Donald Trump Puts Legacy at Risk*, The New York Times (Sept. 9, 2016), <http://www.nytimes.com/2016/09/10/us/politics/rudy-giuliani-donald-trump.html>.

⁹ *Id.*

¹⁰ Great America PAC, "Leadership" at 0:22-0:27 (Jul. 26, 2016), <https://www.youtube.com/watch?v=K9B711MeCRo&app=desktop>.

¹¹ *Id.* at 0:12-0:21.

¹² See 52 U.S.C. § 30125(e)(1).

¹³ See 52 U.S.C. § 30101(8)(A)(i) (defining "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value.").

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subject to federal contribution limits, prohibitions, and reporting requirements.¹⁴ To be a “coordinated communication,” a communication must meet the three-pronged coordination test laid out in 11 C.F.R. § 109.21: (1) the communication must be paid for by someone other than the candidate, the candidate’s authorized committee, or a political party committee;¹⁵ (2) it must satisfy one of the requirements of the “content prong,” which includes a communication that expressly advocates the election or defeat of a clearly identified candidate;¹⁶ and (3) it must meet any one of five standards of the “conduct prong,” which includes the “material involvement” of an agent of the campaign in the production of the communication.¹⁷

This ad meets the “paid-for” prong because it was paid for by Great America PAC. It meets the content prong because it expressly advocates the election of Donald J. Trump as President. It also meets the conduct prong. A communication meets the conduct prong when a candidate or the candidate’s agent is “materially involved” in its creation.¹⁸ Under 11 C.F.R. § 109.3, an “agent” of a candidate is any person who has authority to, among other things, request or suggest that a communication be created, produced, or distributed, to be materially involved in decisions regarding communications such as their content and intended audience, and to provide material or information to assist someone else to create a communication.

Mr. Giuliani is an “agent” of Mr. Trump and his campaign. As one of Mr. Trump’s “most prominent advisers,” one who took a leadership role in preparing Mr. Trump for debates and in Mr. Trump’s overall communications strategy, Mr. Giuliani has authority to suggest to the Trump campaign that a communication be created, to be involved in decisions regarding Trump communications such as content or intended audience, and to provide material or information in

¹⁴ See 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.21.

¹⁵ 11 C.F.R. § 109.21(a)(1).

¹⁶ *Id.* § 109.21(c)(3).

¹⁷ See *id.* § 109.21(d)(2).

¹⁸ *Id.*

creating Trump communications. Mr. Giuliani was "materially involved" in the creation of this ad. The FEC has advised that appearing in an advertisement in a speaking role means that the person was "materially involved" its creation.¹⁹ By extension, the appearance of a campaign committee agent like Mr. Giuliani also means that the agent was "materially involved" in the creation of the ad.

The ad therefore meets all three prongs and is a "coordinated communication." Because Great America PAC is a Super PAC, it is prohibited from making contributions to Mr. Trump's campaign.²⁰ Even if Great America PAC were permitted to make contributions to Mr. Trump's campaign, these coordinated communications likely well exceed the \$2,700 limit on contributions to federal candidates under 52 U.S.C. § 30116(a)(1).²¹ Thus, Mr. Trump violated 52 U.S.C. 30125(e)(1) by receiving illegal and excessive contributions, and Great America PAC violated 52 U.S.C. 30116(a)(1) by making such contributions.

REQUESTED ACTION

As we have shown, there is a strong likelihood that Respondents have violated the Federal Elections Campaign Act. We respectfully request that the Commission investigate these likely violations, including whether they were knowing or willful. We also request that Respondents be fined the maximum amount permitted by law.

Sincerely,



¹⁹ FEC Adv. Op. 2004-01 (Bush/Kerr); FEC Adv. Op. 2003-25 (Wcinzapfel).

²⁰ See 52 U.S.C. § 30125(e)(1).

²¹ See Great America PAC, 24/28 Hour Report of Independent Expenditures Schedule E at 3 (Sept. 28, 2016), <http://docquery.fec.gov/pdf/769/201609289032141769/201609289032141769.pdf#navpanes=0> (reporting expenditures of \$250,000 to Rapid Response Television, LLC for television advertising in support of Donald J. Trump for President).

SUBSCRIBED AND SWORN to before me this 12 day of October, 2016.

Molly Sullivan *Molly S*
Notary Public

My Commission Expires:

October 31, 2020

